

APPEAL NO. 030764
FILED MAY 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 10, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, and eighth quarters. The claimant appeals the determinations on sufficiency of the evidence grounds and challenges the constitutionality of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to sixth, seventh, and eighth quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue was whether the claimant's underemployment was a direct result of the impairment from the compensable injury and whether the claimant had a total inability to work during the qualifying periods. Rule 130.102(c) and 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As stated above, the claimant challenges the constitutionality of Rule 130.102(d)(4), regarding no ability to work. We have said that the courts are the appropriate forum to determine constitutionality of the administrative rules of the Texas Workers' Compensation Commission. See Texas Workers' Compensation Commission Appeal No. 950092, decided February 23, 1995, and the cases cited therein. Accordingly, we decline to address this matter on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge